

STATE OF NEW YORK

## **UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126 Albany NY 12212-5126

## **DECISION OF THE BOARD**

Mailed and Filed: JULY 13, 2023

IN THE MATTER OF:

Appeal Board No. 629608

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed June 2, 2023 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a move theater as a film crew associate for about nine months until he was discharged by the employer on January 2, 2023. The claimant filed a claim for benefits. After applying for benefits, the Department of Labor issued an initial determination on March 24, 2023 holding the claimant eligible to receive benefits. The initial determination stated, "[P]rior to the initial determination you did not provide the factual incident or specific event which would be the grounds for

denying benefits to the claimant."

The employer contended that the claimant lost his employment due to misconduct and requested a hearing. The employer's objection letter, dated April 20, 2023, stated that the claimant was discharged for violation of the company's policy. By letter dated April 27, 2023, the Department of Labor notified the employer that the employer's hearing request was not processed because it did not state the employer's objection in sufficient detail. The letter further states that the employer's "[f]ailure to state a specific objection may result in a limitation on the grounds you may raise at the hearing." The letter also stated that if the Department of Labor did not hear from the employer within seven days, the employer's hearing request would be "processed as is". The employer provided no additional information to the Department of Labor about the details of the incident leading to the claimant's separation from employment within seven days.

At the hearing, the employer contended for the first time the claimant was discharged on January 2, 2022, because the claimant was flirting with a customer and used profanity at work. The employer's witness contended it was unable to provide the information to the Department of Labor earlier because "a lot of our management team had changed" and that it "was probably just lost between the cracks."

OPINION: Pursuant to 12 NYCRR 461 (1)(b), if an affected party, other than a claimant, requests a hearing on an initial determination which had held the claimant eligible to receive unemployment insurance benefits, such party must submit a written statement of the factual basis or specific events which such party contends are the grounds for denying benefits to the claimant. The statement of the factual incidents which are in issue should be of sufficient particularity as to inform the claimant of the facts to which the claimant must be prepared to respond at a hearing.

The credible evidence establishes employer failed to provide the Department of Labor with sufficient information to allow the Department to investigate the circumstances of how the claimant's employment ended. Although on notice from the plain language of the initial determination that the employer had not provided sufficient information of the circumstances of the claimant's separation, the employer's objection letter failed to provide any further details of the events resulting in the claimant's separation from employment. The employer also did not provide additional information to the Department of

Labor within seven days of its April 27, 2023 letter. Furthermore, the employer's explanation for why it was unable to provide the Department of Labor with the information does not constitute good cause for its failure to do so (See Matter of Diggle, 101 AD3d 1319 [3d Dept 2021]). We find that the employer is precluded from providing further information at the hearing. As the information provided by the employer fails to establish disqualifying behavior on the claimant's part, we conclude that the claimant was separated from employment under non-disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is affirmed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is overruled.

The initial determination, holding the claimant eligible to receive benefits, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER